

MF 01-10

Tax Type: Motor Fuel Use Tax

Issue: Motor Fuel Distributor – 5 Day Revocation

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

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| THE DEPARTMENT OF REVENUE |) | Docket No. | 00-ST-0000 |
| OF THE STATE OF ILLINOIS |) | License No. | 0-0000 |
| v. |) | | |
| ABC FUEL CO., INC. |) | John E. White, | |
| Taxpayer. |) | Administrative Law Judge | |

RECOMMENDATION FOR DISPOSITION

Appearances: JOHN DOE, appeared, pro se, for taxpayer; John Alshuler appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose when ABC FUEL Co., Inc. (“ABC” or “taxpayer”) protested a Notice of License Revocation the Illinois Department of Revenue (“Department”) issued to it. That notice informed taxpayer that its Illinois supplier’s license would be revoked, in accordance with § 16 of the Illinois Motor Fuel Tax Act (“IMFTA” or “the Act”).

A hearing on ABC’ protest was held at the Department’s offices in Chicago. I have reviewed the evidence offered at hearing, and I am including in this recommendation findings of fact and conclusions of law. I recommend that ABC’ license be revoked, because it does not qualify as a supplier, under the amendment to 35 ILCS 505/16.

Findings of Fact:

1. Taxpayer is licensed as a supplier of special fuels. *See* Department Ex. 1.
2. Taxpayer’s business involves selling small amounts of special fuels to others for use in Illinois. Hearing Transcript (“Tr.”) pp. 11-12 (testimony of JOHN DOE

(“DOE”)); Taxpayer Ex. 1.

3. Taxpayer purchases fuel from a supplier, receives it in its 4400 gallon tank truck, then transports and sells it to customers in Illinois. Tr. pp. 11-12 (DOE).
4. Taxpayer does not own or use a fuel tank with a capacity of 30,000 gallons. Tr. pp. 6-8 (DOE).
5. The Department issued a Notice of Revocation to taxpayer, after determining that taxpayer did not meet the minimum requirements necessary to hold a supplier’s license under amended § 1.14 of the IMFTA. Department Ex. 1; 35 ILCS 505/1.14 (2000).

Public Act 91-173’s Amendment to IMFTA § 1.14’s Definition of “Supplier”

6. Prior to the effective date of Public Act 91-173, § 1.14’s definition of supplier was:

Supplier. “Supplier” means any person other than a licensed distributor who transports special fuel into this State or receives special fuel transported to him from outside the State.

“Supplier” does not, however, include a person who receives or transports into this State and sells or uses special fuel under such circumstances as preclude the collection of the tax herein imposed, by reason of the provisions of the Constitution and laws of the United States. However, a person operating a motor vehicle into the State, may transport special fuel in the ordinary fuel tank attached to the motor vehicle for the operation of the motor vehicle without being considered a supplier.

35 ILCS 505/1.14 (1999).

7. After the effective date of Public Act 91-173, § 1.14’s definition of a supplier was:

Supplier. “Supplier” means any person other than a licensed distributor who (i) transports special fuel into this State or (ii) engages in the distribution of special fuel primarily by tank car or tank truck, or both, and who operates an Illinois bulk plant

where he has active bulk storage capacity of not less than 30,000 gallons for special fuel as defined in Section 1.13 of this Law.

“Supplier” does not, however, include a person who receives or transports into this State and sells or uses special fuel under such circumstances as preclude the collection of the tax herein imposed, by reason of the provisions of the Constitution and laws of the United States. However, a person operating a motor vehicle into the State, may transport special fuel in the ordinary fuel tank attached to the motor vehicle for the operation of the motor vehicle without being considered a supplier.

P.A. 91-173 § 5; 35 ILCS 505/1.14 (2000).

8. Public Act 91-173 became effective January 1, 2000. P.A. 91-173, § 99.

Conclusions of Law:

Section 2 of the IMFTA imposes a tax on “... the privilege of operating motor vehicles upon the public highways and recreational-type watercraft upon the waters of this State.” 35 ILCS 505/2. Section 2a also imposes a tax “... upon the privilege of being a receiver in this State of fuel for sale or use.” 35 ILCS 505/2a. In both cases, the tax is measured by the cost price of fuel, per gallon. 35 ILCS 505/2, 2a. Tax is to be collected by licensed receivers, distributors or suppliers, or paid directly by others. 35 ILCS 505/5, 6, 6a, 7, 7b.

Section 16 of the IMFTA provides for the revocation of licenses issued pursuant to the Act. That section provides, in pertinent part:

The Department may, after 5 days’ notice, revoke the distributor’s, receiver’s, or supplier’s license or permit of any person (1) who does not operate as a distributor, receiver, supplier (a) under Sections 1.2, 1.14, or 1.20, (2) who violates any provision of this Act or any rule or regulation promulgated by the Department under Section 14 of this Act, or (3) who refuses to allow any inspection or test authorized by this Law.

* * *

35 ILCS 505/16.

Here, the Department introduced its notice of intent to revoke taxpayer's supplier's license under the certificate of the Director. Department Ex. 1. When introducing the exhibit, counsel for the Department asserted that the notice was issued after the Department determined that taxpayer lacked storage capacity in excess of 30,000 gallons, as required by § 1.14 of the IMFTA. Tr. p. 4; Department Ex. 1. Thus, the Department seeks to revoke ABC' license because it no longer operates as a supplier under § 1.14, and not because it allegedly violated any provision of the IMFTA or any Department regulation promulgated thereunder, or because it refused to allow any inspection or test authorized by the Act. *See* 35 **ILCS** 505/16.

Taxpayer acknowledged that it lacked a tank, plant or facility with a capacity in excess of 30,000 gallons, or any stationary tank at all. Tr. p. 7 (DOE). Its argument at hearing, however, was that if the amendment to § 1.14 were applied to all small suppliers like itself, then the law would effectively shut it, and others similarly situated, out of business. Tr. pp. 6-8. Taxpayer argued that the legislature could not have intended such a result when it amended § 1.14 of the IMFTA. *See id.*

Unfortunately for ABC, however, Public Act 91-173 also repealed § 3a-1 of the IMFTA, which had previously provided:

Notwithstanding his activities are not those of a supplier as defined in Section 1.14, a person who in this State is engaged in the distribution of special fuel primarily by tank car or tank truck, or both, may, by application to the Department and compliance with the requirements of this Section, obtain a supplier's license, and when so licensed shall be subject to all the obligations and have all the rights and privileges of a supplier under this Act.

35 **ILCS** 505/3a-1 (repealed effective 1/1/00, by P.A. 91-173, § 10). Section 3a-1 of the IMFTA previously allowed small suppliers like ABC — that is, persons without storage

capacity of at least 30,000 gallons — to lawfully distribute special fuel to others primarily by tank car or tank truck, even if, technically, the activities of such persons did not meet the definition of a supplier under the prior definition of the term. 35 **ILCS** 505/3a-1 (1999).

Under the current version of the IMFTA, however, all licensed distributors, suppliers and/or receivers which are “... engage[d] in [the] distribution of [special or motor] fuel primarily by tank car or tank truck, or both,” are also obliged to maintain a plant or facility with storage capacity of not less than 30,000 gallons. 35 **ILCS** 505/1.2, 1.14, 1.20 (2000). Thus, and contrary to ABC’ argument, it appears that when the Illinois General Assembly passed P.A. 91-173 and repealed § 3a-1 of the IMFTA, it clearly intended to stop persons whom both ABC and the Department described as “small suppliers” of special fuel, from being licensed to conduct business in Illinois. *See* Tr. pp. 6-7. Counsel for the Department begrudgingly acknowledged that that was the only interpretation he and others within the Department could give to the IMFTA amendments set forth in Public Act 91-173. *See* Tr. pp. 14-15.

Conclusion:

I conclude that the Department has shown that ABC “... does not operate as a ... supplier ... under Section ... 1.14 ... [of the IMFTA].” 35 **ILCS** 505/16. I recommend, therefore, that the Director revoke its supplier’s license.

April 24, 2001
Date

Administrative Law Judge